

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

MICHAEL LITTLE,

Defendant.
-----X

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: January 28, 2016

LETTER ROGATORY

S2 12 Cr. 647 (KTD)

KEVIN THOMAS DUFFY, United States District Judge:

The United States District Court for the Southern District of New York presents its greetings to the judicial authorities in the Swiss Confederation and respectfully requests the assistance of the Courts of Switzerland to obtain evidence in the form of an oral examination under oath from Dr. Walter Müllhaupt to the extent permissible under Swiss law.

It has been established by this court that Dr. Müllhaupt's testimony is material to a criminal matter pending in the United States of America and a deposition has been ordered. This court assures the Courts of Switzerland and the appropriate judicial authority designated to execute this request that the Courts of the United States are authorized to assist foreign tribunals in the execution of a Letter Rogatory for assistance in criminal matters.

The United States District Court for the Southern District of New York is a competent court of law and equity which properly has jurisdiction over this criminal proceeding, and has the power to compel the attendance of witnesses both within and outside its jurisdiction. This court requests that Courts of Switzerland assist the Courts of the United States of America in gathering evidence pursuant to this Letter Rogatory to ensure the integrity of judicial proceedings in the United States.

THE ALLEGATIONS

The United States Attorney, who is the federal prosecutor for this judicial district, has filed an indictment charging Michael Little with violating the criminal laws of the United States by: endeavoring to obstruct the due administration of the Internal Revenue Service (“IRS”); conspiring to defraud the United States by failing to report his ownership and/or control of assets held in financial accounts in Switzerland and the Channel Islands to the United States government and causing the preparation and filing of false and fraudulent tax returns; aiding and assisting in the preparation of false IRS Forms; willfully failing to file reports of foreign bank and financial accounts; and failing to file individual income tax returns. In this case, the financial accounts at issue were maintained at Barclays Bank, located in Guernsey, Channel Islands and UBS AG, located in Zurich, Switzerland. The Swiss citizen having information concerning the alleged conspiracy is Swiss national Dr. Walter Müllhaupt. Mr. Little informed this court that evidence exists in Switzerland that is (i) relevant; and (ii) may exonerate Mr. Little and is thus crucial to his defense of the criminal charges he now faces in the United States.

The court attaches by way of information, because Mr. Little is presumed innocent until proven guilty beyond a reasonable doubt, a copy of the Second Superseding Indictment that the United States Attorney has filed in this case. The Second Superseding Indictment is the United States Attorney’s recitation of the alleged facts supporting probable cause for finding violations of the laws by which Mr. Little has been charged. The Second Superseding Indictment and a certified translation are appended to this Letter Rogatory as **Appendix A**. The “Swiss Lawyer” described in the Second Superseding Indictment is alleged to be Dr. Müllhaupt, whose evidence is sought by way of this Letter Rogatory.

The court also attaches two letters from the United States Attorney's Office addressing, among other things, whether the United States Attorney's Office currently expects to commence a criminal prosecution against Dr. Müllhaupt and whether the United States Attorney's Office would use Dr. Müllhaupt's testimony against individuals besides Mr. Little. The letters and certified translations are appended to this Letter Rogatory as **Appendix B**.

THE ALLEGED OFFENSES

18 U.S.C. § 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

26 U.S.C. § 7203. Willful failure to file return, supply information, or pay tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. . . . In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

26 U.S.C. § 7206. Fraud and false statements.

Any person who--

- (1) **Declaration under penalties of perjury.**--Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or
- (2) **Aid or assistance.**--Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

26 U.S.C. § 7212. Attempts to interfere with administration of internal revenue laws.

- (a) **Corrupt or forcible interference.**-- Whoever corruptly . . . endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly . . . obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than \$5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than \$3,000, or imprisoned not more than 1 year, or both. . . .

31 C.F.R. § 103.24 (1987). Reports of foreign financial accounts.

- (a) Each person subject to the jurisdiction of the United States (except a foreign subsidiary of a U.S. person) having a financial interest in, or signature or other authority over, a bank, securities or other financial account in a foreign country shall report such relationship to the Commissioner of the Internal Revenue for each year in which such relationship exists, and shall provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons. . . .

31 C.F.R. § 103.27(c)–(d) (1989). Filing of reports.

- (c) Reports required to be filed by § 103.24 shall be filed with the Commissioner of Internal Revenue on or before June 30 of each calendar year with respect to foreign financial accounts exceeding \$10,000 maintained during the previous calendar year.
- (d) Reports required by § 103.22, § 103.23 or § 103.24 shall be filed on forms prescribed by the Secretary. All information called for in such forms shall be furnished.

31 U.S.C. § 5314(a), (c). Records and reports on foreign financial agency transactions.

- (a) Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency, the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency. The records

and reports shall contain the following information in the way and to the extent the Secretary prescribes:

- (1) the identity and address of participants in a transaction or relationship.
 - (2) the legal capacity in which a participant is acting.
 - (3) the identity of real parties in interest.
 - (4) a description of the transaction.
- (c) A person shall be required to disclose a record required to be kept under this section or under a regulation under this section only as required by law.

SUBJECT OF THE PROSECUTION

I. MICHAEL JOHN LITTLE

Date of Birth: 6 October 1950

Place of Birth: Kiel, Germany

Citizenship: United Kingdom

Race: Caucasian

Sex: Male

Height: 5' 10"

Weight: 205 lbs.

Eye Color: Green

Hair Color: Grey

Passport Number: 099067810 (United Kingdom)

THE DEFENDANT'S POSITION

In furtherance of Mr. Little's defense, Dr. Müllhaupt's Declaration and related Exhibits have been filed with this court. The authentication of the Declaration is necessary to exonerate Mr. Little and is thus vital to his defense. Under the United States Federal Rules of Evidence, a declaration, made out of court, is considered hearsay and thus unavailable to be considered when weighing evidence in a criminal trial.

An oral examination of Dr. Müllhaupt, compliant with Swiss law, would allow his Declaration to be tested, authenticated, and submitted at trial. Mr. Little's submission to this court describing his reasons for seeking to question Dr. Müllhaupt is appended, along with a certified translation, to this Letter Rogatory as **Appendix C**. Further, Mr. Little's Supplemental Declaration (including additional attachments) to this court explaining: (i) who Dr. Müllhaupt is and his importance in these proceedings; (ii) a brief chronology explaining the nature and timing of the Defendant's dealings with Dr. Müllhaupt; (iii) why Dr. Müllhaupt's evidence will tend to exonerate the Defendant; and (iv) similarly, why any documents, from the time period 1989 to the present, in Dr. Müllhaupt's possession relating to (a) Harry G.A. Seggerman and his corporations and companies; (b) Suzanne, Edmund, John, Henry, Anne, and Yvonne Seggerman; (c) Michael Meyer; and (d) Gulworthy, Cetura, and Lixam are required to be produced in order to exonerate the Defendant, is appended, along with a certified translation, to this Letter Rogatory as **Appendix D**. Included as Exhibit A to Mr. Little's Declaration is a certified translation of Dr. Müllhaupt's Declaration and the documents that accompanied his Declaration.

ASSISTANCE REQUESTED

The United States District Court for the Southern District of New York respectfully requests that the appropriate judicial authority designated to execute this Letter Rogatory assist in providing testimony and the production of relevant documents from Dr. Walter Müllhaupt for the trial of Mr. Michael Little in the United States. To obtain the testimony of the witness and preserve the integrity of the United States judicial system, this court respectfully requests an order, from the appropriate judicial authority and to the extent permitted by Swiss law, directing the witness to appear in the canton of Zürich to be orally examined, in compliance with Swiss

law, and to produce specified documents, from the time period 1989 to the present, for review, inspection, and copying by the federal prosecutor and counsel for the Defendant. Additionally, this court requests that this testimony be recorded for anticipated use at the trial of Mr. Little.

A deposition is a procedure utilized in the United States to take testimony under oath and penalty of perjury. I am informed that there is no equivalent procedure under Swiss law. It is therefore requested that Dr. Müllhaupt's testimony be recorded and transcribed for possible use at trial.

The use of a recorded deposition, or oral examination, would render the witness's physical presence in the United States unnecessary. Rather than requesting the witness's presence in the United States (which the witness has objected to) the Defendant—who is representing himself with the assistance of stand-by counsel—and the federal prosecutor would each have an opportunity to ask questions of this witness. This could be accomplished through the authorized Swiss court official using the assistance of an interpreter (if necessary), a videographer, and a court reporter, who would record the testimony in both video and written form. The parties would be permitted to request use of the transcripts and video recordings of this testimony during the trial of Michael Little that will occur in the United States.

The deposition procedure enables the attorneys to ask questions of the witness under oath and to ensure that there is a possibility that the testimony they offer is admissible in further court proceedings and at the trial. All expenses incurred to take the deposition will be paid for by the United States government.

This court respectfully requests permission for the federal prosecutor or his representative, and the Defendant, Michael Little, an attorney-at-law representing himself with the assistance of his stand-by counsel, Sean Maher, Esq., to participate in these proceedings.

This court also respectfully requests that the witness be requested to produce designated documents, from the time period 1989 to the present, for inspection, review, and copying by both the federal prosecutor and the Defendant. Specifically, Dr. Walter Müllhaupt resides in Switzerland's jurisdiction, in the canton of Zürich and, it is believed, has probative evidence relating to the incidents that have resulted in Defendant Michael Little's criminal charges.

Therefore, it will further the interests of justice if:

- (1) You permit the proper judicial authority to permit the federal prosecutor and Mr. Little to attend and ask questions of Dr. Walter Müllhaupt. On March 20, 2015, the parties each submitted a list of questions to Dr. Müllhaupt that are appended, along with a certified translation, to this Letter Rogatory as **Appendix E**. On December 4, 2015, the United States Attorney's Office submitted a revised list of questions to Dr. Müllhaupt, which was revised in response to the Swiss authorities' request to do so, that is appended, along with a certified translation, to this Letter Rogatory as **Appendix F**. The United States Attorney has asked that Assistant United States Attorneys Stanley J. Okula, Jr., and Sarah E. Paul each be permitted to be present and to pose additional questions, as may be requested through the Swiss Magistrate. Further, the United States Attorney's Office has asked that their investigators, Lola Fox and Deleassa Penland, each of the Internal Revenue Service of the United States Department of the Treasury, be permitted to be present during the questioning of Dr. Müllhaupt. Mr. Little has asked that he, in his capacity as an attorney representing himself in these proceedings, as well as his court-appointed stand-by counsel, Sean M. Maher, and a Swiss attorney, Herr Dimitri Papadopoulos, be permitted to be present and to pose additional

questions, as may be requested through the Swiss Magistrate. Mr. Little has requested that a translator be present during the proceedings as well, and has named Petra S. Gehrung as the translator he wishes to be present during the proceedings before the Swiss Magistrate.

- (2) You request, by your proper and usual process, that Dr. Walter Müllhaupt be summoned to appear before you or some competent office authorized by you, on a date mutually agreed upon by Dr. Walter Müllhaupt and the parties or at a time and/or place to be determined by you, to give testimony under oath by questions and answers upon oral deposition. Such deposition shall continue day-to-day until completion and be conducted in accordance with the Federal Rules of Criminal Procedure to the extent permitted by Swiss law. Dr. Walter Müllhaupt's last known address is:

Dr. Walter Müllhaupt
MÜLLHAUPT & PARTNERS
ATTORNEYS AT LAW
BELLERIVESTRASSE 67
CH-8034 ZURICH
Telephone: +41 44 388 55 55
Telefax: 41 44 388 55 50
mail@mpx.ch
<http://www.muellhaupt-partners.ch>

- (3) In the event that the Law of the Switzerland does not permit the swearing of an oath by Dr. Walter Müllhaupt, the duly appointed officer shall make inquiry of such witness to ensure that he understands the gravity of the procedure and affirms that his statement will be true and correct in all respects. Further, Dr. Müllhaupt would be advised at the commencement of the deposition that any statements he makes during the deposition could be used against him in either the

instant criminal proceeding or in other criminal proceedings in the future, and that he has the right to consult with an attorney before making any statements. Dr. Müllhaupt would be further advised that he has a Fifth Amendment right under the United States Constitution to decline to answer specific questions during the deposition, if answering the question(s) may incriminate him.

- (4) You order Dr. Walter Müllhaupt to appear with any documents relating to his testimony, from the time period 1989 to the present, specifically: (a) all documents relating to Harry G.A. Seggerman and all of his companies and entities; (b) all documents relating to Suzanne, Edmund, John, Henry, Anne, and Yvonne Seggerman, as well as Michael Meyer; (c) all documents (including bank records) relating to Gullworthy, Cetura, and Lixam; (d) all documents relating in any way to Michael Little and any of his entities (including Peahen Investments); (e) all e-mail and other communications involving or relating to Michael Little in connection with any of the above referenced people or entities, subject to Dr. Müllhaupt's choice to exercise his right under the Fifth Amendment of the United States Constitution not to produce documents that may lead to evidence that may incriminate him.
- (5) You order that a verbatim transcript of the testimony of the deposition of Dr. Walter Müllhaupt may be taken and reduced to writing and that the deposition may also be videotaped.
- (6) You order that the oral and any documentary evidence produced pursuant to your enforcement of this Letter Rogatory shall not be used by anyone in any manner or proceeding other than in this matter, United States of America v. Little, Dkt. No.

12 Cr. 647 (KTD), pending in the United States District Court for the Southern District of New York, save with the permission of the Courts of Switzerland.

Please notify the following counsel regarding the time and place for the execution of the request:

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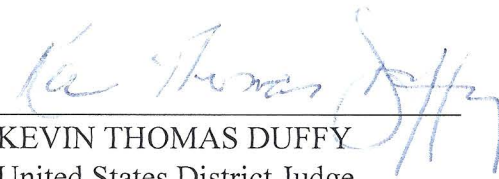
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CONCLUSION

In the spirit of comity and reciprocity, this court hereby requests international judicial assistance in the form of this Letter Rogatory to obtain the oral examination, under oath, of Dr. Walter Müllhaupt. This court expresses its sincere willingness to provide similar assistance to the Courts of Switzerland if future circumstances should require. Please accept the assurance of our highest esteem.



KEVIN THOMAS DUFFY
United States District Judge

Dated: New York, New York
January 21, 2016